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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,111	10/20/2003	William L. Melbye	42698US059	4258

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EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/689,111	Applicant(s) MELBYE ET AL.	
	Examiner James R. Brittain	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kalleberg (US 4290174) in view of Nealis (US 3270408) and Rajala et al. (US 4861399).

Kalleberg (figures 2, 4) teaches hook strip structure including monofilament stems 13 with mushroom heads consisting of a longitudinally oriented polymeric material and a backing 12. The difference is that the base is not homogeneous, the longitudinally orientation of the polymeric material is not stated as having a birefringence value of at least 0.001 and the substrate is not stated as being within the thickness range of 0.1 to 0.5mm. However, Nealis (figures 1-5) teaches that it is desirable to configure the substrate in a homogeneous manner because it is a simpler form which can be easily and inexpensively produced (col. 1, lines 20-22) and Rajala et al. (figures 14, 15) teaches that it is desirable to make the substrate 0.01 inches thick so as to be light and flexible (col. 10, lines 25-31, 45-49). As it would be beneficial to make the fastener of Kalleberg in a less expensive manner, it would have been obvious to modify the fastener of Kalleberg so that the backing is homogeneous in view of Nealis teaching that it is desirable to do so in order to have a fastener that can be inexpensively produced and further have the substrate have a thickness of approximately 0.254 mm (~0.01 in.) so as to be light and flexible as taught by Rajala et al. As to claim 7, the example described in col. 9 of Kalleberg indicates a

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polypropylene monofilament extending from a polypropylene layer. In regard to the dimensions and geometries as claimed, these are obvious over the dimensions and geometries of the fasteners of Kalleberg and Nealis. In regard to claim 9, applicant is given Official Notice that the winding of the hook strip in a roll is a common expedient to store a linear member in the same fashion as the well-known roll of adhesive tape. Since applicant did not traverse the assertion of Official Notice taken with respect to claim 9 that the winding of the hook strip in a roll is a common expedient to store a linear member in the same fashion as the well-known roll of adhesive tape, then the assertion of common knowledge or well-known in the art statement that the winding of the hook strip in a roll is a common expedient to store a linear member in the same fashion as the well-known roll of adhesive tape is taken to be admitted prior art.

Response to Arguments

Applicant's arguments filed October 28, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that Nealis is nonanalogous art in that applicant states "Kalleberg is from an entirely different art field than Nealis" (remarks, page 5, line 4), it has

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been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Nealis is concerned with separable interlocking fasteners and to make them of a simple form that can be easily and inexpensively produced as described in column 1, lines 16-22 as reproduced below:

This invention relates in general to separable interlocking fasteners and more particularly to a method of making them and has for an object the provision of improvements in this art.

One of the particular objects of the invention is to provide a method of making fasteners of simple form which can be easily and inexpensively produced.

Nealis elaborates in column 2, lines 9-21 as reproduced below:

- Each element includes a stem 10a and a head 10b.
- 10 The stem may be formed integrally with the support strip, especially when plastic material is used, as is preferable. Nylon, pyroxylin, polyethylene, rubber and other plastics are suitable. It will be understood by those skilled in the art that such materials will be flowable when heat
- 15 is applied. The stem is flexible and the head preferably is also as well as being elastic so as to be deformable during interengagement. The flexible support strip, preferably also is somewhat elastic so as to yield in any direction to aid in the interengagement of the elements.
- 20 With such a flexible support it is feasible to use more rigid and non-elastic elements.

Nealis is clearly endeavoring to improve separable interlocking fasteners and is analogous art and has ample motivation to suggest combining its teachings with that of Kalleberg.

Applicant argues that the method utilized by Rajala et al. is different than an extrusion process. However, the claims at issue are article claims, so the manner in which the device is made is not an issue, and Rajala et al. indicate the desirability of making the substrate 0.01 inches thick so as to be light and flexible (col. 10, lines 25-31, 45-49) thereby clearly providing motivation for this dimension.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB